IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.6033 OF 2005

Shri Amin Asman Gani. ...Petitioner.
Vs.
The Commissioner, Malegaon
Municipal Corporation & Ors. ...Respondents.
....
Mr. Amit Borkar for the Petitioner.
Mr. S. M. Sabrad for Respondent No.1.
Mr. R. D. Rane, GP for Respondent Nos.2 and 3.
.....

CORAM : F.I. REBELLO, J. AND
DR.D.Y.CHANDRACHUD, J.

January 18, 2006.

P.C.

Rule. Heard forthwith.

The land identified under Survey No.62/1 in terms of the Development Plan notified and as came into force on 1st April 1986, was shown as partly Site No.125 for Garden. The Petitioner on 31st March 1998 served notice on the Corporation under Section 127 of the M.R. & T.P. Act, 1966. The Corporation had not taken any steps to acquire the land. At any rate, from the affidavit filed by S.D. Randive, Assistant Director of Town Planning, Nashik, it is clear that no proposal was forwarded to the Government to

acquire the land. In the meantime, considering the provisions of the M.R. & T.P. Act, a Planning Committee was appointed for preparing a fresh plan. In the Draft Plan, the Committee has deleted reservation of the suit land and that decision was continued by the Planning Authority while accepting Draft Development Plan (Second Revised). The Draft Plan has been submitted to the Government for sanction vide letter No.325 dated 16th February 2005. In the plan as submitted to the Government, Survey No.62/1 is kept reserved as site No.186 under the caption “Garden”.

From the above, it is clear that though a new plan is in the offing, it has not yet been notified and that old reservation on the plot continues. It is, however, to be borne in mind that during the pendency of the first Plan, on completion of a period of 12 years, the Petitioner had issued a notice as required. The Respondent-Corporation took no steps within the time contemplated to acquire the land. In other words, the Petitioner has a right to develop the land even though in a new Draft Development Plan the property continues to be shown as reserved for garden. Our attention was invited to the judgment of this Court in **Ranjan Manubhai Doctor & Ors. vs. State of Maharashtra &**

Ors., 2005(1)Mh. L.J. 718 by the Respondents to contend that as a new Development Plan is in the offing, the earlier notice served will be of no avail. If the judgment in Ranjan Manubhai Doctor (supra) is considered, it would be clear that in that case, a new Development Plan had been notified and during the pendency of the first Plan, the owner had taken no steps as contemplated by Section 127 of the M.R. & T.P. Act. That would be distinguishing feature in this case from that of Ranjan Manubhai Doctor (supra). Once the Petitioner has applied during the subsistence of the first plan and the Respondents have taken no steps to acquire the land, the Petitioner acquires a right to develop the land. In the light of that, the Petitioner's case would have to be considered. However, on behalf of the Petitioner, the learned Counsel submits that the Petitioner would have no objection still if the Respondents are given reasonable time to take steps to acquire the land in terms of M.R. & T.P. Act if they are still so interested. Considering the above, if the Respondents within 9 months from today take steps to acquire the land for Garden as shown in the first Development Plan, then they will be so entitled and the fact that if they did not take steps as contemplated under Section 127, will not stand in the way of the Petitioner. If they fail to take steps to acquire the land

as contemplated under the law, then it would be open to the Petitioner to apply for development of the land and mere fact that a new Development Plan is in the offing or subsequently notified would not stand in the way of development and the Respondents would not consider the new Development Plan if notified for that purpose. Rule made accordingly absolute. No order as to costs.

(F.I. Rebello, J.)

(Dr. D.Y. Chandrachud, J.)